holders to deal freely with their stock. Since the statutory provisions for the transferability of stock are general, this limitation is an act of judicial legislation, and the creditors should get no greater relief than justice requires. That the transferee may become insolvent is true, but the same risk exists when the company is solvent. Moreover there is the equal danger of the transferrer becoming insolvent. The decision of the majority in the principal case seems to preserve the rights of all concerned since it carries out the mercantile idea of making stock freely transferable and at the same time adequately protects creditors in their right of recourse against stockholders.

RIGHTS AND LIABILITIES UNDER OPTION CONTRACTS. — Options have been universally construed by the courts as binding agreements to keep an offer open. On this analysis, the acceptance of the option constitutes the consummation of a bilateral contract, and binds both parties. *Dicta* innumerable to this effect may be found in the cases,[1] both in actions by the holder and in actions by the giver of the option. Thus, in an Alabama case,[2] where the holder of the option attempted to withdraw after acceptance, the giver of the option was refused specific performance only because he was unable to make a good title. It has been insisted, however, that an option is not a contract to keep an offer open,[3] but a complete unilateral contract in which the obligation of the giver of the option is subject to the condition precedent of tender of payment by the holder. Under this view, of course, the latter does not become bound on notification of acceptance. The choice between the two views would seem to depend simply on the intention of the parties. This may clearly appear in the agreement; when, however, as is usually the case, it does not, the general understanding of business men should govern, which would probably favor the interpretation of the courts. Contracts for the sale of land, the usual subject of options, are generally bilateral; and it is, therefore, not unnatural to suppose that the transaction to which the option contract looks forward should be such a contract.

On either theory, however, an option is a contract, and should carry the usual rights and duties of a contract. Accordingly, it is well settled that an option to buy land will be specifically enforced. The defense of lack of mutuality which has been time and again interposed is obviously fallacious. If the option is an offer, both parties become bound by the acceptance, and the situation differs in no respect from that in an ordinary contract of sale.[4] If it is not an offer, the giver of the option can, nevertheless, no more plead lack of mutuality than the promisor in any other unilateral contract whose obligation is subject to a condition precedent. Similarly, the great weight of authority makes an option assignable. True, the option frequently runs to the assigns, but the courts do not rely on this circumstance,[5] and will enforce the option though assigns are not mentioned.[6] It is, therefore, somewhat surprising to find the West Virginia Supreme Court refusing specific performance at the suit of an assignee of an option to purchase land. *Rease* v. *Kittle*, 49 S. E. Rep. 150. The court argues that, since an option

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[1] See Perry *v* Paschal, 103 Ga. 134.
[2] Linn *v.* McLean, 80 Ala. 360.
[3] Professor Langdell, in 18 HARV. L. REV. 1, 11.
[4] See Perry *v.* Paschall, *supra.*
[5] See Maughlin *v.* Perry, 35 Md. 352.
[6] See Linn *v.* McLean, *supra.*

is an offer, it is no more assignable than an ordinary revocable offer. This reasoning overlooks the fact that the giver of the option, unlike the other offeror, has already bound himself to sell the land; and this contract of sale into which, at the will of the holder of the option, the option will ripen, will be freely assignable. As the decision in the principal case, therefore, in no wise protects the giver of the option, it appears simply to place a useless clog on the freedom of business transactions. The reasoning of the case seems, indeed, to furnish an example of one of those super-refinements of legal logic which courts generally recognize merely to dismiss. The case finds some support in the analogy of the Rhode Island doctrine that the right of the holder of an option is not descendible,[7] a rule, however, only less exceptional than that in the principal case.[8]

NATURE OF A LANDOWNER'S RIGHT TO KILL GAME. — In the Roman law the ownership of animals *ferae naturae*, even when upon private land, was in the inhabitants of the state in common; in the English law it was in the sovereign as representative of the people.[1] Although a landowner acquired property in animals killed upon his land, the state, by virtue of its ownership of the animals when alive, controlled the privilege of killing them.[2] It has, therefore, been suggested that a landowner's right to shoot game upon his own land is not an interest in property, but merely a license granted at the discretion of the state and revocable at any time. As the inhabitants of the state are owners in common of the wild animals, non-residents may be excluded from the privilege of shooting them for the reason that they have no title.[3] A recent Arkansas case refused to adopt this theory. A statute forbade non-residents to shoot and fish in the state. The defendant, a non-resident, who owned land in the state, pleaded that the statute violated the Fourteenth Amendment in that, by depriving him of a property right which other proprietors enjoyed, it failed to afford him the equal protection of the law. The court sustained his contention. *State* v. *Mallory*, 83 S. W. Rep. 955.

There seems to be no reason in the nature of things why the state originally, as owner of both land and wild animals, should not have granted the land and withheld the right to shoot the animals. But the weight of authority is clear that the state made no such reservation. In England a man has a common law right to shoot game on his land, and this he possesses *ratione soli*.[4] It is recognized as a property right which may be granted to others, who thereby acquire a *profit à prendre*, a distinct interest in the land.[5] Similarly, the Supreme Court of Canada has held that the right of a riparian landowner to fish on non-navigable waters is an exclusive right attached to his interest in the land, and that an attempt of the state to grant a license to one landowner and not to another was an arbitrary interference with property

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[7] Newton *v.* Newton, 11 R. I. 390.
[8] See McCormick *v.* Stephany, 57 N. J. Eq. 257.

[1] Inst. Just. bk. 2, pt. 1, § 12; 2 Bl. Com. 414.
[2] 2 Bl. Com. 410.
[3] See Geer *v.* Connecticut, 161 U. S. 519; Magner *v.* People, 97 Ill. 320.
[4] Coke, 4 Inst. 304; Keble *v.* Hickringill, 11 Mod. Rep. 75. See Blades *v.* Higgs, 11 H. L. Cas. 621, 630.
[5] Webber *v.* Lee, 9 Q. B. D. 315.